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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§ DOCKET NO. INC. 01-188

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Gene and Diana M. Freeman (“Taxpayers”) for income tax for the years 1992 through 1995. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 6, 2003. Richard Bell represented the Taxpayers. Assistant Counsel David Avery represented the Department.

The issue in this case is whether the Department timely entered the final assessments in issue within the special one year statute of limitations at Code of Ala. 1975, §40-2A-7(b)(2)g.1. That statute allows the Department to assess a taxpayer within one year from the receipt of IRS audit information.

The IRS audited the Taxpayers and issued them a notice of deficiency concerning 1992 - 1995 in April 1998. The Taxpayers appealed to the Tax Court. The Tax Court affirmed. The IRS later accepted an offer in compromise from the Taxpayers that substantially reduced the amount due.

The IRS submitted its audit information concerning the Taxpayers to the Department on April 5, 2000. The information indicated that the Taxpayers had failed to report certain dividend and gambling income in the subject years. The Department recomputed the Taxpayers’ Alabama liabilities for those years based on the IRS information, and entered

preliminary assessments for the additional tax due on November 7, 2000. The Department subsequently entered the final assessments in issue. The Taxpayers appealed.

The Taxpayers concede that the Department assessed them within one year from when it received the IRS information. They claim, however, that the special §40-2A-7(b)(2)g.1. one year statute does not apply because the federal tax was not timely assessed. The Taxpayers' representative claims that the statute of limitations issue was not raised with the IRS because the Taxpayers represented themselves.

The Department clearly complied with the special one year statute in this case. It is not relevant for purposes of the statute that the federal tax may not have been timely assessed. What is relevant is whether the IRS information on which the State assessments are based is correct. That is not contested in this case.

In *Jefferson Smurfit Corp. v. State of Alabama*, Corp. 99-115 (Admin. Law Div. OPO 10/22/99), the Administrative Law Division stated as follows:

As a practical matter, the special one year statute is limited because the IRS has its own statute of limitations within which it must make audit changes and assess tax. See, 26 U.S.C. §6501. Obviously, if the IRS is time-barred from making audit changes for a tax year, there can be no federal audit changes for the year which would authorize the Department to assess additional Alabama tax pursuant to §40-2A-7(b)(2)g.1.

Jefferson Smurfit, Corp. 99-115 at 6.

The Taxpayers argue that the above statement stands for the proposition that if the federal tax was time-barred from assessment, then the special one year statute would not apply. I disagree.

The above quote simply recognizes that if the federal tax was time-barred, then as a practical matter, there should be no federal audit changes that would allow the Department

to assess under the one year statute. It does not mean that the Department cannot use the federal information to assess under the one year statute if the federal tax was time-barred.

In any case, there is no conclusive evidence that the federal assessments against the Taxpayers were time-barred. The Taxpayers argue that the federal tax was assessed outside of the general three year statute, and thus not timely assessed, because there was no finding of fraud by the Tax Court. However, the IRS may have assessed the Taxpayers under the special six year 25 percent omission statute, 26 U.S.C. §6501(e), which is identical to Code of Ala. 1975, §40-2A-7(b)(2)b.

The final assessments in issue must be affirmed. Judgment is entered against the Taxpayers for 1992 tax, penalty, and interest of \$5,785.49; 1993 tax, penalty, and interest of \$3,509.84; 1994 tax, penalty, and interest of \$7,624.99; and 1995 tax, penalty, and interest of \$3,626.43. Additional interest is also due from the date of entry of the final assessments, January 16, 2001.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 27, 2003.

BILL THOMPSON
Chief Administrative Law Judge